

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**DAVID WICHTERMAN, JR., as
Administrator of the Estate of Daniel
Wichterman,
Plaintiff,**

v.

**CITY OF PHILADELPHIA,
CORIZON HEALTH,
POLICE CORRECTIONAL OFFICER
JUSTIN AVERY,
POLICE CORRECTIONAL OFFICER
WILLIAM GWALTHNEY, and
TAIRU WAHABU, RN,
Defendants.**

CIVIL ACTION

NO. 16-5796

ORDER

AND NOW, this 17th day of April, 2017, upon consideration of Defendant's [City of Philadelphia] Motion to Dismiss for Failure to State a Claim (Doc. No. 9, filed Jan. 17, 2017) and Plaintiff's Response in Opposition to the Motion to Dismiss of Defendant City of Philadelphia (Doc. No. 11, Feb. 7, 2017), for the reasons set forth in the accompanying Memorandum dated April 17, 2017, **IT IS ORDERED** that defendant's Motion to Dismiss is **DENIED WITHOUT PREJUDICE** to defendant's right to raise the issues presented after completion of discovery by motion for summary judgment and/or trial.

IT IS FURTHER ORDERED that a Preliminary Pretrial Conference will be scheduled in due course.

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.